irritated. He was not facing them. He did not hear any slapping. The place was quite noisy then. He next saw that the deceased had fallen down and was unconscious and Rozario was calling out to him "Veloo, Veloo".

On all the evidence it was clear that there was nothing personal about this argument. It did not arise from any personal animosity between the deceased and Rozario. They were both assigned to work as a team and they were both keen to do their employer's duties properly. That was the main concern of both these employees which gave rise to their dispute. Each one thought he could do better in the work they had to perform as a team and so there were differences of opinion and each wanted his opinion to prevail in the interests of the employer's duty.

So clearly this dispute between the deceased and Rozario was in the course of their employment and the eventual slapping by the deceased and the subsequent pushing or punching of the deceased by Rozario which resulted in the deceased accidentally falling backwards and hitting his head against the floor and receiving personal injuries to his head from which he died were also all clearly arising out of the employment. The deceased when he slapped Rozario was clearly acting in the course of his employment. His main object was to get the saw from him and do the work properly.

The whole incident took only a matter of minutes. None of the acts of the deceased or Rozario were motivated by any personal animosity or rancour — not even the slap on Rozario by the deceased nor the retaliatory push or punch on the deceased by Rozario. The push, on Rozario's own admission, was not to hurt him but to get the deceased out of the way so that he could continue with the sawing.

Moreover when workers with the low level of education as the deceased and Rozario are asked to work as a team by their employer, with very little direct on the spot supervision as here, disputes such as these over the manner in which the work is to be carried out can by no means be said to be unexpected. Such incidents are incidental to and here manifestly arose out of their employment in working as a team. The deceased sustained these personal injuries in an accident in the course and arising out of his employment within the meaning of section 3 of the Act.

The learned Commissioner of Workmen's Compensation appears to have taken too narrow a view of the evidence when he isolated the slapping of Rozario by the deceased from the totality of the evidence concerning this unfortunate incident and went on to find that when the deceased slapped Rozario, the deceased was doing an act not in the course of his employment and the retaliatory act of Rozario which caused the deceased to fall did not arise out of his employment but of the deceased's own wrongful act. He further found that it was not an accident within the meaning of section 3 of the Act. For the reasons I have given above these findings ought to be set aside.

I therefore allow this appeal and find that the appellant has proved her claim for compensation under the Act. There shall be judgment for the amount assessed with costs here and in the proceedings below.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Cooma, Lau & Loh.*

LAI CHI KAY & ORS. v. LEE KUO SHIN

[O.C.J. (Chua J.) February 27, 1981]

[Singapore — Civil Suit No. 3002 of 1978]

Damages — Quantum — Brain injury — Medical student awarded $727,514 — Third party claim by mother of injured for expenses — Claim disallowed.

Torts — Negligence — Motor accident — Brain injury suffered by medical student — Dispute only as to quantum — Third party claim.

Damages — Interest — Court's discretion — Interest not allowed when damages awarded in running-down cases — Civil Law Act (Cap. 30), s. 9.

The first and second plaintiffs in this case were walking on the pavement in Beach Road, Singapore on June 19, 1977 when they were knocked down by a car driven by the defendant. Both the said plaintiffs were injured and they together with the parents of the first plaintiff, commenced action against the defendant for damages. Liability was admitted by the defendant in respect of the claims of the first and second plaintiffs. The defendant denied liability as regards the claims of the parents of the first plaintiff.

The first plaintiff, Lai, was 24 years old and a fourth year medical student at the University of Singapore, at the time of the accident. Lai was from Hong Kong on a Singapore Government Scholarship. As a result of the accident he suffered extensive brain injuries, crushing all his hopes of being a doctor. He was discharged from hospital in April 1978 and resumed medical studies for some time. In January 1980, the Medical Board convened for his case and was of the view that it was most probable that he would never be able to complete the medical course as a result of the injuries sustained by him in the said accident. In May, 1980, Lai on the recommendation of the Board, took up Radiography. Four months later he had to abandon it as he could make no headway. Lai was subsequently not gainfully employed.

The third plaintiff, Tan was Lai's mother. On being told of the said accident she flew from Hong Kong to Singapore to be with her son. She remained with him ever after his discharge from the hospital.

The High Court held that the reasonable and fair basis to ascertain his loss of future earnings would be a sum of representing the mean between the maximum and minimum salaries in the Hong Kong Medical Service. That would be in the region of HK$10,000 per month equivalent to S$5,000 per month. Based on a multiplier of 15, the figure for loss of future earning arrived at S$622,800. The court also considered his loss of pension rights. The formula is

$$\frac{\text{Highest salary drawn (HK\$12,830) x months of Service (180) x 12}}{600}$$

= HK$46,188 = S$23,094.

Two years' pension would be HK$46,188 rounded to HK$46,000.

The plaintiffs' counsel also applied for interest on the award for pain and suffering and loss of amenities of life from the date of the service of the writ.

Held: (1) in Singapore, the power of the court to award interest on debts and damages is to be found in section 9 of the Civil Law Act (Cap. 30). It is a discretionary power;

(2) in the present case, interest was not allowed based on the principle that interest should not be allowed when damages are awarded in running-down cases;

(3) in the normal run of cases, a third party will have no direct remedy against the wrong-doer. In the present case there was no medical evidence that there was a need for the companionship of the mother for the rehabilitation of Lai. The claim for loss by the third and fourth plaintiffs was therefore not allowed;

(4) the first plaintiff was awarded S$727,514 and costs and the second plaintiff was awarded S$8,500 and costs.

[Editorial Note: See the Malaysian case of *Mohamed Ibrahim & Anor.* v. *Christopher Piff & Anor.* [1981] 1 M.L.J. 221 in which the Federal Court agreed with the trial judge in allowing special damages for air passages for the family of the injured.]

Cases referred to:-

(1) *Lim Poh Choo* v. *Camden and Islington Area Health Authority* [1979] 1 All E.R. 332; [1979] 3 W.L.R. 44.

(2) *Soh Kheng Seng* v. *Leong Chee Hoong & Anor.* (Suit No. 411 of 1979) *unreported.*

(3) *Jefford* v. *Gee* [1970] 1 All E.R. 1202.

(4) *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253.

(5) *Best* v. *Samuel Fox & Co.* [1952] 2 All E.R. 394, 398.

(6) *Receiver for the Metropolitan Police District* v. *Croydon Corporation* [1957] 2 Q.B. 154.

(7) *Kirkham* v. *Boughhey* [1958] 2 Q.B. 338.

(8) *Donnelly* v. *Joyce* [1974] 1 Q.B. 454.

CIVIL SUIT.

Tan Kok Quan for the plaintiffs.

Roland Wong for the defendant.

Cur. Adv. Vult.

Chua J.: On June 19, 1977, Lai Chi Kay and Wong Keng Yean were walking on the pavement in Beach Road, Singapore, when Lee Kuo Shin, (the defendant) so negligently drove a motor car No. EA 5451 J along Beach Road that he caused the car to mount the pavement and collided with and knocked down Lai Chi Kay and Wong Keng Yean. Lai Chi Kay and Wong Keng Yean sustained injuries and they together with Tam Tuan Yi, and Lai Kwok Him, the mother and father respectively of Lai Chi Kay, commenced this action against the defendant for damages.

In respect of the claims of Lai Chi Kay and Wong Keng Yean liability is admitted by the defendant. In respect of the claim of Wong Keng Yean quantum of damages is agreed at $8,500. In respect of the claims of the parents of Lai Chi Kay the defendant denies liability.

Lai Chi Kay, who is from Hong Kong, was a fourth year medical student on a Singapore Government scholarship at the University of Singapore at the time of the accident and he was then 24 years old. As a result of the accident Lai suffered extensive brain injuries, crushing all his hopes of being a doctor as he was unable to complete his medical studies. After the accident and following his discharge from hospital in April 1978, he resumed his medical studies for some time but in January 1980, the Medical Board convened for his case and was of the view that it was most probable that he would never be able to complete the medical course as a result of the injuries sustained by him in the accident in June 1977. The Board recommended that he be trained for one of the para-medical technical courses. In May 1980, Lai took up Radiography but had to abandon it four months later as he could make no headway. Lai is at present not gainfully employed.

Tam Tuan Yi on being told of the accident by telephone by the university authorities promptly flew from Hong Kong to Singapore to be with her son. She said she visited her son daily when he was in hospital and after his discharge from hospital and when he went back to medical school she visited him daily at the hostel to see to his needs and at times go out for a walk with him. In November 1978, she took her son back to Hong Kong where they stayed until March 1979, and then returned to Singapore. Madam Tam said that before she came to Singapore in June 1977, she was doing embroidery work at home to supplement the family income and her husband was and is still a taxi driver in Hong Kong.

Madam Tam's claim is for special damages suffered by her and they are for air fares, accommodation and food, taxi fares, and loss of earnings from embroidery work.

Lai Chi Kay suffered severe brain injury. On admission to the Singapore General Hospital he was deeply unconscious. On the same day of the accident he was transferred to the Department of Neurosurgery & Neurology, Tan Tock Seng Hospital. He had a very gross swelling of the brain because of the injury. He developed a left subdural hitgrome, a condition where there was a failure to absorb fluid secreted in the brain. He needed surgery to correct this — a minor procedure by which a valve and a tube were inserted into the brain and the other end of the tube was inserted into the abdomen so that fluid in the brain drained into the abdomen. He still has the tube. By July 14, 1977, he was still in coma. His progress in hospital had been minimal.

On July 14, 1977, Mr. James Khoo, the Neurosurgeon, reported that

"in the context of the severity of his injury, the length of coma continuing, it is unlikely that he will be able to lead an independent useful life again although a full and definitive prognosis cannot be given at this early stage."

By August 15, 1977, Lai was able to sit up in a chair with fair control over his head posture and able to move all his limbs spontaneously. He was able to breath without the tracheostomy and able to obey commands. He was transferred to the department of rehabilitation on August 29, 1977. With physical, speech and occupational therapy, Lai gradually became ambulant and became able to carry on a simple conversation by December 1977. He was discharged for outpatient treatment on April 5, 1978.

He now walks quite well with a spastic right hemiparetic gait and he is able to write and read as well as feed and cloth himself.

On July 8, 1978, Mr. James Khoo reported:

"His main problems are mainly (1) memory for recent events and storing new information — which is improving but still poor; (2) emotional liability, part if which may be due to the frustration of not being able to graduate. This is however also improving."

Dr. G. Baraltom, Senior Neurosurgeon, Tan Tock Seng Hospital, who is familiar with the medical his-

tory of Lai Chi Kay, examined Lai on October 15, 1980, at Outpatients. His report reads:

"He was noted to speak very slowly and his speech had a scanning character. He had a very poor memory and was aware of this defect. He often lost his way because of this and had to be accompanied when travelling. His mood was extremely labile and he was particularly upset by the fact that he could not complete his medical studies. He had recently failed his examination in the School of Radiographers. He was aware of all his deficiencies and this intensified his suffering.

This man will not be able to pursue any academic course of study because of his poor memory and intellect. In addition he has severe disability because of his injury and this is made worse by the fact that he has insight into his disability. These deficiencies are permanent."

Speaking of his examination of Lai on October 15, 1980, Mr. Baraltom said in evidence:

"I saw him on the 15th October 1980 to put up a report. Yes that was the only one occasion. I saw him at Outpatient. It was mainly talking to him and it took about 20 minutes. I did not put him through any physical test. I tried to test his memory by asking him to remember a series of numbers and I talked to him. I talked to him about his memory capacity; I enquired into whether he had any physical symptoms like giddiness, headache. He had no headache or giddiness. On that occasion his mother was with him. Yes I spoke to the mother about his case. Two-thirds of the time the first plaintiff was talking. I would not agree that most of my opinion was based on what the mother told me.... Yes my conclusions were based on what plaintiff said during our conversation.... No, I did not put first plaintiff through any written test. Yes there are certain established tests. I am not competent to apply that. I think for that period of time I could give a comprehensive report. I have been a neurosurgeon for 15 years; I have seen many such head injuries and seen similar patterns of disability."

Mr. Baraltom in his evidence said that Lai was not able to find his way back from the toilet to Outpatients; that he could not retain eight random digits for more than half a minute. Mr. Baraltom said that Lai was emotionally labile and he got very depressed because of his mental disability and that Lai was very aware of his disability and Mr. Baraltom expressed the view that Lai's awareness increases his suffering a great deal. Mr. Baraltom said:

"Compared with a person who is paralysed, very difficult to be objective, but my own view is that this form of mental disability is a kind of mental paralysis which would produce more suffering than a physical defect particularly for a person who was in the course of becoming a doctor. It depends on what his previous enjoyments were. I would personally find it worse to be in his position than to be bedridden and being able to read."

Dr. Gwee Ah Leng, a neurologist, examined Lai Chi Kay on September 20, 1978, and submitted a report to the defendant's solicitors. Dr. Gwee reported:

"Examination on September 20, 1978 shows a cooperative young man with normal pulse and blood pressure. He has a tracheostomy scar in his neck, and has no obvious psychological or emotional disturbance. He was somewhat clumsy in his left side and walked slowly, but has no definite defect in motor, sensory or coordinative side. The special senses are normal. His speech tends to be slurred due to deficit in articulation but can be easily understood. Tests of memory shows no clear defect except in medium range memory which is impaired. X-ray shows evidence of burr noles and a tube — most likely a snunt.

My opinion is that he has sustained a contusion of brain in the accident resulting in a protracted coma, and convalescence. He has residual loss of memory, and impaired articulation of motor ability in the right side. There is also some loss of intellectual ability compared to his achievements prior to his accident. However, he has made a good recovery and is in fact back to his studies. I have no doubt that he is capable of further improvement but his impaired intellect may interfere with his ability to complete the medical course, although he should be able to live a reasonable life with independent activity please." (sic.)

Dr. Gwee examined Lai further on September 1, 1980, and he reported: —

"My opinion is that he will never be fit to follow a professional course or for that matter, any training leading to a vocation. At best, he may do very low-skill jobs like a junior clerk for example."

In his evidence Dr. Gwee said:

"On the first occasion (20th September, 1978), I carried out standard tests, for ability movement, sensation, balance and also the mental aspect which related to understanding, attention, memory and mood. He was put through all these tests.

....

....

The fact that he was able to be back to study on 3rd July, 1978, shows that he was able to look after himself.

I found that his main problem was medium range memory. Normally human memory is of three kinds — short range, medium range and long range. Long range memory are things one learns and remembers for a long time, almost a life time. Short range memory consists of items given to be remembered and must be given back immediately. Medium range memory consists of items given to be remembered over a short period of time, after one hour. He did quite well in the tests except that the medium range memory was impaired.

He attended the medical school all by himself. When I saw him he had attended medical school for two months after his discharge from hospital.

He is able to do low-skilled job. If you train him to type he would be able to be a typist but he would not be a good typist."

Mr. Baraltom comments on Dr. Gwee's view that Lai, at best, may do very low-skilled job like a junior clerk was that it would depend on the work involved. Mr. Baraltom agreed that Lai could do low-skilled jobs but with limitations. He said that if the job involved memory work like taking telephone messages he might forget them before he had time to record them and that he would have problems finding his way from his home to his place of work.

The mother said that after his discharge from hospital on April 6, 1978, up to today, Lai always lost his temper and was very moody, because he was very upset because he could not complete his studies. Mr. Baraltom said that in terms of a person's mood you could only get it from a third person; that it was well recognised that after a severe head injury people do show a mood abnormality, irrespective of external circumstances. Dr. Gwee in his report said that he was told by the mother that Lai was more irritable, less able to grasp things mentally and had poor memory. In his evidence Dr. Gwee said that he had no doubt what the mother said and he continued:

"In fact I was surprised to find him co-operative and cheerful. I would not say that is normal of a person who had head injury. Yes I confirmed by tests that he was less able to grasp things mentally and has poor memory."

Dr. Gwee further said:

"Yes my conclusion is that his medium range memory is impaired. I think he is able to learn to type, reflex action, he can walk, he can pick up chopsticks, he can learn to type. Yes there could be long range memory but they were destroyed by the injuries and he had to re-learn. I would

not say that to learn to type would require medium range memory; it is mechanical.

....

I was not told that he had to be brought to various lecture rooms by his friends. To be guided all the time in medical school is not possible. I questioned the plaintiff and he told me he went out by himself.

....

....

I do not think he would require a person to take him to and from work. He could learn to find his way to his place of work. It depends on how complex his route is. But he can learn; his medium range memory is not lost, it is impaired.

I saw him twice. I was surprised that he had taken it much better than I would expect. I would experience the same frustration if I am unable to complete my medical course. It could be due to different reaction to different examiner."

Lai Chi Kay was an inpatient under the care of Dr. Robert G. Don, Senior Physician, Rehabilitation Medicine and Head of Department of Rehabilitation Medicine at the Tan Tock Seng Hospital from August 29, 1977, to April 5, 1978, and subsequently followed up as an outpatient. Dr. Don examined Lai on November 4, 1980 following which he was also assessed in the Department of Rehabilitation Medicine to determine

(i) his vocational performance in clerical and typing work;

(ii) memory impairment.

Dr. Don's report reads: —

"*Vocational assessment in clerical work*

The upper limbs are normal in power and range of movement, but with minimal incoordination noticed during simple activities. When given simple clerical tasks to perform, it was noted that his concentration span was poor and he was easily distracted. Comprehension appeared fair but even simple instructions had to be repeated several times. Cerebration was slow and this was reflected in overall work performance; he also demonstrated poor organising ability. Although he seemed orientated to time and place he often had to check with his watch to confirm date and month. In clerical work he was also handicapped by loss of recent memory i.e. poor recall of activities performed. As a result of poor memory he often forgot what he was doing before being interrupted. Initiative was poor and he lacked the ability to make simple decision. Work performance which included calculation of simple statistical data, filling of forms and telephone communication was generally poorly executed inspite of a genuine attempt to try.

Typing

Although it is alleged that he used to type extensively before his accident i.e. medical notes etc, his recent performance at copy-typing of a medically-familiar text was very poor with multiple mistakes in spelling, sentence structure and spacing in addition to being very slow.

Communicative ability

He has good functional speech and is able to conduct a brief simple discussion over topics relevant to him, express his opinion and ask good questions. He is also able to write simple messages. However, although speech and oral reading are clear, he shows poor comprehension of the written sentence, particularly when it is part of a paragraph and he is unable to place himself in context. Retention of what has been read is very poor and he is unable to re-tell what he has read.

Psychological re-evaluation (11.11.80 by Mr. Ong Kin Wee, Psychologist, Woodbridge Hospital)

Although intellectually there is minimal improvement compared to initial evaluations, he still demonstrates definite memory impairment especially of recent events.

Opinion

It is my considered opinion that due to overall poor cerebration resulting from the severe brain damage, the patient is incapable of working effectively even as a junior clerk/typist."

In his evidence Dr. Don said:

"When 1st plaintiff was under my care everytime I examined him his mother was present (3rd plaintiff identified). His mother's companionship went a great way towards his rehabilitation. His mother's further companionship will further help him in his rehabilitation.

....

1st plaintiff has insight to his own illness; his injuries would not affect his normal life span, not at this stage."

As regards the companionship of his mother contributing to the rehabilitation of Lai, Dr. Don agreed that that would depend to a great extent on the closeness between mother and son. He said that if there was no closeness it was possible that that would have an adverse effect. He was not in a position to say if there was a close bond between Lai and his mother but from his observation over the years he would say that they were quite close. Dr. Don agreed that Lai could be a lift attendant or sweeper or do light labourer's work which did not involve memory work but he had to be constantly supervised. Dr. Don also expressed the view that Lai would not be able to get to and from his place of work and that he would require supervision. He said that Lai could be led to his place of work and he could learn to get there but occasionally he would have a lapse of memory and he would get lost.

I now turn to consider the various heads of damages. *First damages for pain and suffering and loss of amenities of life.*

Lai was in a coma for a few months and he was in hospital for a period of 9½ months. He still has a tube embedded in his head to drain fluid in the brain into his abdomen. He is fully aware of all his deficiencies and this intensifies his suffering. He is extremely forgetful and is not able to find his way around in a new environment. He cannot enjoy reading a book.

Mr. Tan Kok Quan for Lai submits, (basing it on the view of Mr. Baraltom) that Lai's suffering is more than that of a person who is paralysed. He cited the cases of *Lim Poh Choo* v. *Camden and Islington Area Health Authority*[1] and *Soh Kheng Seng* v. *Leong Chee Hoong and Koh Kee Chye*[2] where the court awarded £20,000 and $110,000 respectively for pain and suffering and loss of amenities of life. In *Lim Poh Choo's* case her injuries were entirely different. Since her operation she had been a helpless invalid and only intermittently sentient and she required total care for the rest of her life. In *Soh Kheng Seng's* case the plaintiff was paralysed in all four limbs. He had no sensation of his bladder neither could he feel his bowel. He had completely no control over his bladder. He was totally dependent on other people for daily essentials such as feeding, washing, dressing, locomotion and care of the bowels. Unless he was properly nursed and taken care of his life expectancy would be greatly shortened. I do not agree that Lai's case is worse than that of Lim Poh Choo or Soh Kheng Seng. In the light of

the authorities in my judgment the proper award would be $55,000.

Second, loss of future earnings.

After considering the medical evidence I conclude that it is highly improbable that Lai Chi Kay would ever be gainfully employed.

Lai had good passes in his yearly examination and there is no doubt that he would certainly have completed his studies during the academic session 1977-78 and graduated as a doctor. At the time of the accident he was 24 years old and would have graduated at the age of 25 and thereafter start his housemanship at 26 and work as a doctor. He is from Hong Kong and his family ties are in Hong Kong. He was holding a scholarship from the Singapore Government and under the scheme of the scholarship he would not be bonded by the Singapore Government. The probabilities are that after qualifying as a doctor he would return to Hong Kong to work. If he joined the Hong Kong Medical Service his age of retirement would be 55 years. He would have a good working life of 29 years with the Hong Kong Medical Service. The future of Lai in the Service would be bright. He would not end up his career as an ordinary medical officer.

In my view the reasonable and fair basis to ascertain his loss of future earnings would be a sum representing the mean between the maximum and minimum salaries in the Hong Kong Medical Service. That would be in the region of H.K. $10,000 p.m. equivalent to Singapore $5,000 p.m.

Mr. Tan submits that the proper multiplier should be 29 as Lai would have a good working life of 29 years. However, the authorities cited by Mr. Roland Wong show that the Courts in England applied a multiplier of 15 where the plaintiffs were aged 15, 18, 23 and 24. Rajah J. in *Soh Kheng Seng's* case applied a multiplier of 15 and the plaintiff there was 22 years old at the date of the accident.

In this case I must make a substantial discount because of the accelerated payment, some reduction for the contingency that Lai will not reach the average age and some reduction to allow for other contingencies. Balancing these elements as best I can and taking into consideration the authorities cited I find that the appropriate multiplier to be 15. On this basis the figure for loss of future earnings is $622,800.

Third, loss of pension rights.

It is not disputed that Lai Chi Kay has suffered this loss. It is agreed Lai be given two years pension. The formula is

$$\frac{\text{Highest salary drawn (HK\$12,830)} \times \text{months of Service (180)} \times 12}{600}$$

$$= \text{HK\$46,188} = \text{S\$23,094.}$$

Two years pension would be $46,188 rounded to $46,000.

Mr. Tan asked for interest on the award for pain and suffering and loss of amenities of life from the date of the service of the writ. In support of his application he cited *Jefford* v. *Gee*[3] and *Lim Poh Choo's* case heard by the House of Lords. In England before 1970 the power of the court to award interest in personal injury cases was discretionary. But since January 1, 1970, it has become compulsory by statute. In Singapore, the power of the court to award interest on debts and damages is to be found in section 9 of the Civil Law Act (Cap. 30). It is a discretionary power. The plaintiff in the case of *Ban Pet Hock* v. *Ong Ah Ho*[4] applied for interest on the sum awarded for personal injuries and Choor Singh J. held that on principle interest should not be allowed when damages are awarded in running-down cases. I respectfully agree with that decision. I, therefore, do not allow interest in this case.

I now come to deal with the claim of the third plaintiff, Lai Chi Kay's mother.

Mr. Roland Wong submits that the mother's claim is not recoverable in law. His argument is that the driver of a vehicle on a public highway owes a duty not to injure other persons who are using the road on which he is driving. He owes no duty to persons not present except to those whose property may be on or adjoining the road which it is his duty to avoid injury, (*per* Lord Goddard in *Best* v. *Samuel Fox & Co.*[5]).

The law as regards the claim of a third party for loss of expense incurred as a result of injury to another person is this. At one time there was considerable support for the view that a person could sue if he had necessarily incurred expense as a result of the defendant's negligence. So, a parent could sue for expense he had incurred through injuries caused to his child by the defendant's negligence. Following the decision in *Receiver for the Metropolitan Police District* v. *Croydon Corporation*[6] the earlier view must be considered erroneous and those cases in support of it wrongly decided. Therefore, in the normal run of cases, a third party will have no direct remedy against the wrong-doer. Lord Morton in *Best* v. *Samuel Fox & Co.* considered the situation of a daughter of the injured man having to give up work, which she enjoyed, and stayed at home to nurse a father, who had been transformed into an irritable invalid, as a result of the defendant's negligence, and concluded that she had no right of action against the defendant, since he had not committed a breach of duty towards her. This was because it was a case of the daughter herself suffering a loss and not one of her incurring expense on her father's behalf at all.

In *Kirkham* v. *Boughey*,[7] the plaintiffs, husband and wife, sustained injuries as a result of a motor accident on September 10, 1955, caused by the negligence of the defendant. The wife sustained severe injuries and was detained in hospital until February 1, 1956. The husband, who sustained only trivial injuries, was due to return to his employment in Africa at the end of September 1955, but he decided because of his anxiety for his wife and the problem of caring for their two children, not to return, and he took employment in England at a substantially lower wage. Diplock J. (as he then was) held that although it was

reasonable for the husband to remain in England from September 1955, until about March 1956, he was not entitled to recover as damages his loss of earnings during that period. In the course of his argument counsel for the plaintiff submitted that if a daughter or a sister gave up lucrative employment to nurse an injured father or brother she would have a cause of action against the driver provided only that the court was satisfied that in the circumstances it was reasonable to do so. Commenting on this argument, Diplock J. said:

"However commendable may be the sacrifice made by the relative of the injured person, she has, in my opinion, no remedy in law against the driver of the vehicle which caused the injuries, because the driver owes no duty to her."

It is clear, therefore, that the third plaintiff has no right of action.

In any case the third plaintiff has not satisfied me that she was doing embroidery work at home.

Mr. Tan submits that Lai Chi Kay can recover the travelling and other expenses and the loss of earnings of the mother. He relies on the case of *Donnelly* v. *Joyce*.[8] In that case a minor, aged six years, having sustained leg injuries in a road accident, included in his claim for damages (i) the travelling expenses of his parents to and from hospital on visits; (ii) the cost of special socks and surgical boots; and (iii) two years loss of wages incurred by his mother who had to give up her job in order to nurse and look after him. Items (i) and (ii) were not contested by the defendant but (iii) was disputed on the basis that as there was no legal obligation to reimburse his mother such a claim could not succeed. The trial court awarded the plaintiff £147 representing the mother's loss of wages for six months. On appeal it was held that since the loss to the plaintiff caused by the defendant's wrongdoing included the existence of the need for the nursing services provided by his mother he was entitled to recover her loss of wages of £147 as the proper and reasonable cost of supplying that need.

Mr. Tan submits that the loss of the mother in this case is in fact Lai's loss because of the existence of the need of companionship of his mother. I am of the view that *Donnelly's* case does not help Lai. There is no medical evidence that there was a need for the companionship of the mother for the rehabilitation of Lai. The medical evidence I have is that the companionship of the mother "went a great way towards his rehabilitation." Even then there is no evidence in what way the companionship of the mother had helped towards the rehabilitation of Lai. Dr. Don agreed that it depended to a great extent on the closeness between mother and son. Dr. Don was not in the position to say if there was a close bond between mother and son but he said from his observation over the years he would say that they were quite close. There is no other evidence. I don't think one can really say that the companionship helped towards the rehabilitation of Lai.

For the reasons that I have given, the fourth plaintiff or Lai cannot recover the loss suffered by the fourth plaintiff.

Lai has also claimed special damages. The defendant has agreed to the following claims: item (4) $678, item (12) $156, item (13) $150, item (14) $80 and item (20) $10, totalling $1,074.

The defendant has disputed the following claims:

(a) Item (6) Hostel charges from 20/3/79 to 5/7/80 @ $180 p.m. ... $2,640.

I allow this claim. These charges were incurred by Lai in an attempt to mitigate damages in attempting to do a course in Radiography. If Lai had lived with his parents he would not have incurred these additional charges.

(b) Items (15), (16) & (17) Air fares to and from Hong Kong.

It is said that the trips to Hong Kong was part of his rehabilitation. I disallow these claims.

In the result there will be judgment (a) for the first plaintiff, Lai Chi Kay, in the sum of $727,514 and costs; (b) for the second plaintiff in the sum of $8,500 and costs.

The claims of the third and fourth plaintiffs are dismissed.

Order accordingly.

Solicitors: *Lee & Lee; Wong & Partners.*

METRO (PTE.) LTD. & ANOR. v. WORMALD SECURITY (S.E.A.) PTE. LTD.

[O.C.J. (Kulasekaram J.) June 18, 1981]
[Singapore — Suit No. 3073 of 1976]

Contract — Service contract — Breach admitted — Dispute as to liability — Non-repudiation of contract by plaintiffs — Reliance by defendants on Exemption Clause — Clause wide enough to cover breach.

Contract — Breach of — Loss suffered by plaintiffs — Claim for damages — Non-repudiation of contract by plaintiffs — Breach admitted — Dispute as to liability — Exemption Clause to cover breach.

The plaintiffs in this case were the owners of the "Metro" group department stores. The defendants who were suppliers of security alarm systems also undertook to instal, maintain and man these alarm systems for the detection of any unauthorised breaking into or out of the premises to minimize thefts or other damage to goods. By an "Installation and Service Agreement" of June 26, 1974 made between Metro Holdings Ltd. for and on behalf of the plaintiffs (the customer) the defendants (the Company) agreed to instal in the plaintiffs' premises at Beach Road, a security alarm system and to maintain and man the same for an initial period of 12 months for $7,086 installation charges and $175 per month, service fee. Clause 4(ii) of the said Agreement states that "where no keys to the customer's premises are held by the Company the Customer or such person as the Customer has nominated for this purpose will be notified as quickly as possible and if the customer wishes the police will be notified of the customer's anticipated time of arrival at the premises". None of the keys were held by the defendants. The plaintiffs by a letter dated November 4, 1974, had nominated five persons to be notified (as required by Clause 4(ii)) in case of any emergency.

The security alarm system was duly installed on the said premises by November 1974 and thereafter the parties had started operating the alarm system. On February 2, 1975 at 10 p.m. the management carried out the usual procedure to see that all the doors were locked and secured and all the